

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

FIDEL DAVIS,

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Plaintiff,

CIVIL ACTION NO. 5:15-CV-00138-RWS

V.

T EVANS ET. AL,

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Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

The Plaintiff Fidel Davis, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The Defendants have filed what they term a “motion to revoke Plaintiff’s *in forma pauperis* status” (Docket No. 36). In their motion, Defendants argue that Plaintiff has had three other cases dismissed as frivolous or dismissed for failure to state a claim. *Id.* at 2–3. While only one of these cases had become final at the time Davis filed the present lawsuit, the Defendants maintained that it is within the Court’s authority to revoke Plaintiff’s *in forma pauperis* status even though he received two of his three strikes after the present case was filed. *Id.* at 4.

After review of the statutory language and pertinent case law, the Magistrate Judge issued a Report recommending that the Defendants' motion to revoke be denied (Docket No. 56). No

objections were filed. Accordingly, the Court reviews the Magistrate Judge's Report and Recommendation for clear error. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

The Court has reviewed the pleadings in this matter and the Report of the Magistrate Judge and has determined that the Report of the Magistrate Judge is correct. The Court agrees with the Magistrate Judge that, since Davis had not previously brought three lawsuits or appeals that had been dismissed as frivolous or malicious or for failure to state a claim when he brought this lawsuit, his *in forma pauperis* status should not be revoked.

It is accordingly ORDERED that the Report of the Magistrate Judge (Docket No. 56) is **ADOPTED** as the opinion of the Court. It is further ORDERED that the Defendants' Motion to Revoke Plaintiff's *In Forma Pauperis* Status (Docket No. 36) is DENIED.

SIGNED this 21st day of August, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE